

Item LEG06-04 Response Form

Title: Small Claims: New \$10 Postponement Fee (amend Code Civ. Proc., § 116.570)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

☐ **Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 23, 2006

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council,
the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action.*

Invitations to Comment LEG06-04

Title	Small Claims: New \$10 Postponement Fee (amend Code Civ. Proc., § 116.570)
Summary	This legislative proposal to amend the Small Claims Act, Code of Civil Procedure section 116.570, would authorize the court to charge and collect a nonrefundable postponement fee from either party who makes more than one pre-service request to postpone the trial.
Source	Civil and Small Claims Advisory Committee
Staff	Cara Vonk, 415-865-7669, cara.vonk@jud.ca.gov
Discussion	<p><u>Issue</u></p> <p>The Coalition of Trial Court Clerk Associations states that courts are faced with plaintiffs who file small claims actions but then do not pursue service on the defendant. Instead, some plaintiffs make repeated requests to postpone the trial date, resulting in the use of valuable court resources to reschedule small claims trial dates. Under current statutory procedure a postponement fee can be charged only after the defendant has been properly served.</p> <p><u>Discussion</u></p> <p>The Coalition of Trial Court Clerk Associations has asked the Judicial Council to jointly sponsor legislation authorizing the court to charge and collect a \$10 fee for postponements of small claims trials under specified circumstances. If adopted, form SC-110, <i>Request to Postpone Small Claims Hearing</i>, would be amended to conform to the new legislation, effective on the same day as the new legislation.</p> <p>The Civil and Small Claims Advisory Committee (“committee”) recommends that a \$10 nonrefundable fee be charged to process the second and subsequent requests for postponement of a hearing before the claim has been served. The committee also recommends that the same fee be charged to process the second and subsequent requests for postponement by a defendant who has failed to serve a cross-claim. This fee would only be assessed after a party has already been granted a prior postponement. A self-represented party who filed a claim should know by the time the first free request for a postponement is made what procedures are available to serve his or her claim and whether any extra effort in effecting service may be required. By the second request for postponement, a minimum of 40 days to a maximum of 140 days will have passed from the date the claim was filed. This should be sufficient time for effecting service. Any additional requests for rescheduling the trial would be subject to a \$10</p>

fee under this proposal.

The Uniform Civil Fees and Standard Fee Schedule Act of 2005 creates a moratorium on court filing fee increases until January 1, 2008, with limited exceptions. If there is support for the proposed statutory change after it circulates for comment, the committee will consult and coordinate with the Judicial Council Task Force on Civil Fees (Gov. Code, § 70601) in seeking legislation that is consistent with the moratorium and any other policy considerations.

In addition to circulating the request for comment to the Administrative Office of the Court's usual mailing list of courts, bar associations, publishers, and other interested persons, the committee intends to solicit comment from small claims advisors, Consumers Union, and other consumer advocacy organizations.

The text of the legislative proposal follows.

Attachment

Code of Civil Procedure section 116.570 would be amended, effective January 1, 2008, to read:

1 **§ 116.570. Request to Postpone Hearing Date**

2
3 **(a)** Any party may submit a written request to postpone a hearing date for
4 good cause.

5
6 (1) The written request may be made either by letter or on a form
7 adopted or approved by the Judicial Council.

8
9 (2) The request shall state whether any previous requests to postpone
10 the hearing date were made by the requesting party and whether
11 the court granted those requests.

12
13 ~~(2)~~ (3) The request shall be filed at least 10 days before the hearing
14 date, unless the court determines that the requesting party has
15 good cause to file the request at a later date.

16
17 ~~(3)~~ (4) On the date of making the written request, the requesting party
18 shall mail or personally deliver a copy to each of the other
19 parties to the action.

20
21 ~~(4)~~ (5) (A) If the court finds that the interests of justice would be
22 served by postponing the hearing, the court shall postpone
23 the hearing, and shall notify all parties by mail of the new
24 hearing date, time, and place.

25
26 (B) On one occasion, upon the written request of a defendant
27 guarantor, the court shall postpone the hearing for at least
28 30 days, and the court shall take this action without a
29 hearing. This subparagraph does not limit the discretion of
30 the court to grant additional postponements under
31 subparagraph (A).

32
33 ~~(5)~~ (6) The court shall provide a prompt response by mail to any
34 person making a written request for postponement of a hearing
35 date under this subdivision.

36
37 **(b)–(c) * * ***

38 **(d)** A nonrefundable fee of ten dollars (\$10) shall be charged and collected
39 for the filing of a request for postponement and rescheduling of a

1 hearing date after timely service pursuant to subdivision (b) of Section
2 116.340 has been made upon the defendant.

- 3
4 (e) A nonrefundable fee of ten dollars (\$10) shall be charged and collected
5 for the filing of a request for postponement and rescheduling of a
6 hearing date before service has been made pursuant to subdivision (b)
7 of Section 116.340 or subdivision (b) of Section 116.360 if the court
8 granted a prior postponement to the party making the request.
9